

MEMORANDUM

To: Brock Curry, Calvin Finch, Nathan Pence, Andy Sampson, Tom Taggart,

Cc: Jenna Cantwell

From: Robert L. Gulley, Program Manager

Dated: May 6, 2012

Re: Summary of Meeting of May 4, 2012 Regarding Implementing Committee Members' Ability to Perform Work as a Contractor Regarding the Implementation of the HCP

Representatives of members of the Implementing Committee including Nathan Pence (City of New Braunfels), Tom Taggart (City of San Marcos), Calvin Finch (SAWS), Andy Samson (Texas State University), and Brock Curry (EAA) met informally on May 4, 2012, to discuss the impact of section 5.6.5 of the Funding and Management Agreement (FMA) on the ability of Dr. Thomas Hardy and the River Systems Institute to serve as contractors with respect to the implementation of the Habitat Conservation Plan (HCP). The following is a summary of the discussions at that meeting. The discussions at that meeting were not intended to bind any member but represented a view of those attending the meeting as to a way to address this question. The issue will need to be formally presented to the Implementing Committee for consideration.

Section 5.6.5 of the FMA states, in relevant part, that "with the exception of Program Administration Costs of the EAA, funds may not be used for: (a) costs of any Party's employees" The representatives discussed their views that this language was not specifically intended to preclude a Implementing Committee members from serving as a contractor on HCP projects, but agreed that the broad language of this provision in the FMA precluded the River Systems Institute (or, for that matter, any Implementing Committee member) from serving as a primary contractor for any HCP work because payments to the River Systems Institute would constitute using HCP funds to pay Texas State University employees.

The representatives agreed that maintaining Thomas Hardy's continued involvement in the implementation of HCP activities is important to the success of the HCP. Thom Hardy has spent many years working with the spring systems. Moreover, by often expressing different perspectives, he and Ed Oborny have contributed to improved outcomes regarding controversial and complicated science issues. Accordingly, it was agreed that it was in the best interest of the Implementing Committee to find a solution that will allow his continued involvement.

The representatives agreed that Texas State employees at the River Systems Institute, including Dr. Hardy, could, consistent with section 5.6.5 of the FMA, be part of a contract for work on HCP if the River Systems Institute was a subcontractor to the primary contractor for the work. Under this circumstance, the HCP funds would be paid to the primary contractor and the

Implementing Committee would be contracting only with the primary contractor. It was also agreed that any work on which the River Systems Institute was a subcontractor would be subject to a competitive procurement process to ensure that selected contractor is the most qualified and cost effective. Finally, the River Systems Institute employees working on these projects must not participate in policy-related decisions with respect to the Implementing Committee and the implementation process.

If this approach is adopted, it would apply to any work on the HCP by a member of the Implementing Committee as a contractor. It was further noted that the approach would also allow SAWS, City of San Marcos, and City of New Braunfels to serve as a subcontractor with respect to the Regional Municipal Conservation Program.